

Regulation 30-1

Statement of Policy

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S.C. Department of Health and
Environmental Control

2600 Bull Street | Columbia, SC 29201

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A. South Carolina Coastal Zone Management Act.

(1) The South Carolina Coastal Zone Management Act was passed by the 1977 General Assembly of South Carolina to provide for the protection and enhancement of the State's coastal resources. This legislation creates the South Carolina Coastal Council which is given the task of promoting the economic and social welfare of the citizens of this State while protecting the sensitive and fragile areas in the coastal counties and promoting sound development of coastal resources. The South Carolina Coastal Zone Management Act was amended by Act 181 of 1993 which merged South Carolina Coastal Council with the South Carolina Department of Health and Environmental Control. South Carolina Coastal Council became the Office of Ocean and Coastal Resource Management (OCRM).

(2) Through the efforts of an overall coastal zone management program and permitting process, the Department seeks to guide the wise preservation and utilization of coastal resources. These rules and regulations are intended to:

(a) aid developers and others in taking advantage of state-of-the-art techniques in developing projects compatible with the natural environment;

(b) insure consistent permit evaluations by the Department; and

(c) serve as a stimulus for implementation of better and more consistent management efforts for the coastal zone.

(3) These regulations are the Department statements of general public applicability that implement and prescribe policy and practice requirements of the Department. They are to be read as part of, and to be construed with, the policies set forth in the South Carolina Coastal Management Program.

B. The Value of Tidelands and Coastal Waters.

(1) The tidelands and coastal waters of the South Carolina coast are a very dynamic ecosystem and a valuable natural resource for the people of the State. The tides regularly ebb and flood through the coastal inlets, bays and marshes which constitute a fragile area, vulnerable to the impacts of many human activities. Tidelands and coastal waters are identified as "critical areas" over which the Department has direct permitting authority.

(2) The saline marshes are highly productive components of the marine food web of coastal waters and estuaries. Decaying organic material, called detritus, serves as the basis of the food web and is the major biological contribution of the saline marshes. Many commercially and recreationally important fish and shellfish species depend on the marshlands and estuaries for all or part of their life cycle. In addition, many birds and other forms of wildlife utilize wetlands as habitat as well as a source of food. Tidelands and coastal waters also have become increasingly important in recent years for the purposes of aquaculture.

(3) Among the important functions of the salt and brackish marshes is their role in protecting adjacent highlands from erosion and storm damage. Marsh vegetation absorbs and dissipates wave energy and establishes a root system which stabilizes the soils. Its effectiveness as a buffer depends on the surface area available which, combined with the composition of the underlying substrate, allows tidelands to act as "sponges," absorbing and releasing waters during storms or times of heavy riverine discharge.

(4) Marshes also perform a valuable waste treatment function since the dense vegetation acts as a filter, trapping sediments and pollutants which enter as run-off from the upland areas. The trapping of sediments helps maintain water clarity, a factor important to clam, oyster, and phytoplankton productivity. The marshes also assimilate pollutants and recycle nutrients through various biochemical processes.

(5) Coastal waters and the adjacent marshes are also significant as aesthetic, recreational and educational resources. Much of the expenditure for recreation and tourism in the South Carolina coastal zone is for purposes of enjoying outdoor activities and the aesthetic pleasures of undisturbed tideland areas. These natural areas lend themselves to meaningful and important academic pursuits such as bird-watching and wildlife population and nutrient recycling studies.

(6) These same unique natural resource areas face increasing land development pressure and negative impacts from human activities in and around them. The marshes constitute a fragile ecosystem; consequently, indiscriminate dredging and filling, degradation of water quality or unsound building and development practices can have long-term detrimental effects. All development need not be prohibited; rather, the range of favorable and unfavorable results needs to be realized, and analysis made to determine priorities, evaluate alternatives, anticipate impacts, and suggest the best methods and designs to carry out wise development of these resources.

C. The Value of Beaches and Dunes.

(1) In 1977, the South Carolina General Assembly enacted the Coastal Tidelands and Wetlands Act (Coastal Zone Management Act) to protect, preserve, restore and enhance the coastal resources of South Carolina. The Act created a new state agency, the South Carolina Coastal Council, and charged it with the responsibility of administering and enforcing the statute. This legislation, however, proved ineffective for managing the beach/dune system because regulatory authority over these areas given to the Coastal Council was not sufficient. From the State's beaches, the Coastal Council could regulate landward only to the primary oceanfront sand dune or to the highest uprush of the waves where no such dune existed.

(2) Lacking adequate authority, the Coastal Council was unable to prevent structures from being sited unwisely close to the eroding shore, thus making them extremely vulnerable to the effects of storms and high tides. The owners of the structures, in most instances, quickly sought permits from the Coastal Council (herein referred to as the Department) to construct hard erosion control devices in order to protect their erosion threatened structures. Unfortunately, hard erosion control devices can result in increased erosion, a lowering of the beach profile (thereby reducing the beach/dune system's tourist and recreational value), and a decrease in the ability of the beach/dune system to protect upland property from storms and high tides. Often the result of attempting to protect upland property with hard erosion control structures is that dry sand beaches disappear, thereby placing many millions of tourist dollars in jeopardy and destroying this natural legacy for future generations.

(3) In 1986, the Blue Ribbon Committee on Beachfront Management was formed in response to the growing recognition that existing law was inadequate to protect the fragile beach/dune resource. The Committee determined that the beach/dune system of the State was in a state of crisis. The report concluded that "over fifty-seven miles of our beaches are critically eroding. This erosion is threatening the continued existence of our beach/dune system and thereby threatening life, property, the tourist industry, vital State and local revenue, marine habitat, and a national treasure". The 1988 Beachfront Management Act was enacted by the South Carolina General Assembly in response to the concerns presented in this report.

(4) It has been clearly demonstrated that the erosion problems of this State are caused by a persistent rise in sea level, a lack of comprehensive beach management planning, and poorly planned oceanfront development, including construction of hard erosion control structures, which encroach upon the beach/dune system. Sea level rise in this century is a scientifically documented fact. Our shoreline is suffering from its effects today. It must be accepted that regardless of attempts to forestall the process, the Atlantic Ocean, as a result of sea level rise and periodic storms, is ultimately going to force those who have built too near the beachfront to retreat.

(5) There are three basic approaches to beachfront management:

- (a) armor the beach with hard erosion control devices;
- (b) renourish the beach with sand;
- (c) retreat from the beach.

(6) The 1977 Coastal Zone Management Act, as amended, rejects construction of new erosion control devices and adopts retreat and renourishment as the basic state policy towards preserving and restoring the beaches of our state. The Department, as steward of the State's coastal resources, has the responsibility under the new statute to implement the forty-year retreat policy by designating a baseline and setback line on all oceanfront properties of the State, developing a long-range comprehensive State plan for management of the beach/dune resource, and supporting the efforts of local governments in developing local long-range beach management plans. In addition, the Department shall require property owners to move new construction and reconstruction as far landward as possible, to limit the size of structures within the constraints of the Act, and to seek innovative ways to ameliorate the effects of beach erosion.

(7) In the final analysis, the long-range public good is the same as the long-range private good. If the dry sand beaches of this State disappear because of the failure of its people and governmental natural resource managers to protect the beach/dune system, future generations will never have the opportunity to use and enjoy this valuable resource.

D. Definitions:

(1) Abandoned Vessels/Structures - Any boat, barge, dock, pier or other structure/vessel in the critical areas that is no longer functional for its primary, intended purpose and for which repair or salvage activity is not actively being pursued.

(2) Active Beach - the area seaward of the escarpment or the first line of stable natural vegetation, whichever first occurs, measured from the ocean landward.

(3) Administrative Law Judge - a judge appointed pursuant to SC Code Ann. Section 1-23-510 (1976) (as amended) who is assigned a particular matter by the Chief Administrative Law Judge, or if no administrative law judge has been assigned for a particular matter, the Chief Administrative Law Judge.

(4) Baselines:

(a) Within a standard erosion zone the baseline is established at the location of the crest of the primary oceanfront sand dune in that zone. In a standard erosion zone in which the shoreline has been altered naturally or artificially by the construction of erosion control devices, groins, or other man-made

alterations, the baselines must be established by the Department using the best scientific and historical data, as where the crest of the primary ocean front sand dune for that zone would be located if the shoreline had not been altered.

(b) Within an unstabilized inlet zone the baseline must be determined by the Department as the most landward point of erosion at anytime during the past forty years, unless the best available scientific and historical data of the inlet and adjacent beaches indicate that the shoreline is unlikely to return to its former position. In collecting and utilizing the best scientific and historical data available for the implementation of the retreat policy, the Department as part of the State Comprehensive Beach Management Plan provided for in this chapter, among other factors, must consider: historical inlet migration, inlet stability, channel and ebb tidal delta changes, the effects of sediment bypassing on shorelines adjacent to the inlets, and the effects of nearby beach restoration project on inlet sediment budgets.

(c) Within a stabilized inlet zone the baseline location must be determined in the same manner as provided for in a standard erosion zone. However the actual location of the crest of the primary oceanfront sand dune of that erosion zone is the baseline of that zone, not the location if the inlet had remained unstabilized.

(5) Beach/Dune System - all land from the mean high-water mark of the Atlantic Ocean landward to the 40 year setback line described in Section 48-39-280.

(6) Best Management Practices - measures to reduce adverse environmental impacts.

(7) Boat - A vessel or watercraft of any type or size specifically designed to be self propelled, whether by engine, sail, paddle, or other means, which is used to travel from place to place by water.

(8) Boat Storage Structure - any structure associated with a dock that is used for the purpose of storing a boat out of the water and may include, but is not limited to, boatlifts, davits, and any other type of floating vessel platform. A boat storage structure is not a fixed pierhead, walkway, ramp, or gangway.

(9) Boat Yard - a facility where boats are repaired.

(10) Bridge:

(a) Non-vehicular - bridges designed for use by pedestrians, golf carts or other maintenance vehicles, but not cars and trucks; are not docks; and can have a maximum clear width on the deck surface of six feet.

(b) Vehicular - bridges with a clear width on the deck surface of over six feet and designed to support traffic by cars and trucks.

(11) Coastal Island - an area of high ground above the critical area delineation that is separated from other high ground areas by coastal tidelands or waters. An island connected to the mainland or other island only by a causeway is also considered a coastal island. The purpose of this definition is to include all islands except those that are essentially mainland, i.e., those that already have publicly accessible bridges and/or causeways. The following islands shall not be deemed a coastal island subject to this section due to their large size and developed nature: Waites Island in Horry County; Pawleys Island in Georgetown County; Isle of Palms, Sullivans Island, Folly Island, Kiawah Island, Seabrook Island, Edisto Island, Johns Island, James Island, Woodville Island, Slann Island and Wadmalaw Island in Charleston County; Daniel Island in Berkeley County; Edisto Beach in Colleton County; Harbor Island, Hunting Island, Fripp Island, Hilton

Head Island, St. Helena Island, Port Royal Island, Ladies Island, Spring Island and Parris Island in Beaufort County.

(12) Coastal Waters - the navigable waters of the United States subject to the ebb and flood of the tide and which are saline waters, shoreward to their mean high-water mark.

(13) Coastal Zone - all coastal waters and submerged lands seaward to the State's jurisdictional limits and all lands and waters in the counties of the State which contain any one or more of the critical areas. These counties are Beaufort, Berkeley, Charleston, Colleton, Dorchester, Horry, Jasper, and Georgetown.

(14) Coastal Zone Management Appellate Panel - the appellate body which conducts a quasi-judicial review of decisions from the Division pursuant to SC Code of Laws, Section 1-23-610 (1993 amend.) and 48-39-150(D) (1993 amend.).

(15) Critical Areas - any of the following: (1) coastal waters, (2) tidelands, (3) beach/dune systems and (4) beaches.

(16) Department - the South Carolina Department of Health and Environmental Control (also referred to as SCDHEC).

(17) Destroyed Beyond Repair:

(a) Habitable Structures - destroyed beyond repair means more than sixty-six and two-thirds percent of the replacement value of the habitable structure has been destroyed. See R.30-14(D)(3)(a).

(b) Pools - destroyed beyond repair means more than sixty-six and two-thirds percent of the replacement value of the pool has been destroyed. See R.30-14(D)(3)(b).

(c) Seawalls and Bulkheads - damage to seawalls and bulkheads must be judged on the percentage of the structure remaining intact at the time of the damage assessment. Erosion control structures or devices must not be repaired or replaced if destroyed:

(i) more than eighty percent above grade through June 30, 1995;

(ii) more than sixty-six and two-thirds percent above grade from July 1, 1995, through June 30, 2005;

(iii) more than fifty percent above grade after June 30, 2005. See R.30-14(D)(3)(c).

(d) Revetments - must be judged on the extent of displacement of the stone, effort to return this stone to the pre-storm event configuration of the structure or device, and the ability of the revetment to retain backfill material at the time of the damage assessment. See R.30-14(D)(3)(d).

(18) Division - the Administrative Law Judge Division.

(19) Dock - All docks defined herein refer to structures that provide docking space for ten boats or less.

(a) Boat Storage Dock - a floating structure that a vessel is parked on for purposes of out-of-water storage.

(b) Commercial Dock - a docking facility used for commercial purposes. A commercial dock is not necessarily a marina, a boat yard, or a dry storage facility.

(c) Community Dock - any docking facility that provides access for more than four families, has effective docking space of no more than 250 linear feet and is not a marina. Effective docking space means adequate length and water depth to dock a 20-foot boat.

(d) Joint use dock - any private dock intended for the use of two to four families.

(e) Private Dock - any facility that provides access for one family, and is not a marina.

(20) Emergency Orders - orders issued in response to an emergency as defined in Section 48-39-10(U), by the Department or upon written notification to the Department by an appointed official of a county or municipality or of the state acting to protect the public health and safety. With regard to the beach/dune critical area, only the use of sandbags, sand scraping, renourishment, or a combination of them, in accordance with R.30-5 and R.30-15.H, is allowed pursuant to emergency orders.

(21) Emergency Repairs - repairs due to emergencies as defined in Section 48-39-10(U) to an existing bank, dike, fishing pier, or structure other than ocean front erosion control structures or devices which have been erected in accordance with federal and state laws or provided for by general law or acts passed by the General Assembly, if notice is given in writing to the Department within 72 hours of the onset of the needed repair.

(22) Erosion Control Structures and Beach Renourishment:

(a) Seawall - a special type of retaining wall that is specifically designed to withstand wave forces.

(b) Bulkhead - a retaining wall designed to retain fill material, but not to withstand wave forces on an exposed shoreline.

(c) Revetment - a sloping structure built along an escarpment or in front of a bulkhead to protect the shoreline or bulkhead from erosion.

(d) Beach Renourishment - the artificial establishment and periodic renourishment of a beach with sand that is compatible with the beach in such a way as to create a dry sand beach at all stages of the tide and/or provide some level of storm protection.

(23) Feasible (feasibility) - As used within these rules and regulations (e.g., "unless no feasible alternative exists"), feasibility is determined by the Department with respect to individual project proposals. Feasibility in each case is based on the best available information, including, but not limited to, technical input from relevant agencies with expertise in the subject area, and consideration of factors of environmental, economic, social, legal and technological suitability of the proposed activity and its alternatives. Use of this word includes, but is not limited to, the concept of reasonableness and likelihood of success in achieving the project goal or purpose. "Feasible alternatives" applies both to locations or sites and to methods of design or construction, and includes a "no action" alternative.

(24) GAPC (Geographic Areas of Particular Concern) - areas within South Carolina's coastal zone which have been identified in the State's Coastal Management Program as being of such importance as to merit special consideration during the Department review of permit applications. GAPC's consist of: (1) areas of unique natural resource value; (2) areas where activities, development, or facilities depend on proximity to coastal waters, in terms of use or access; and (3) areas of special historical, archeological or cultural significance.

(25) Garage - a structure built and used for the purpose of parking and protecting vehicles. The structure may be open or enclosed. An open parking area under a habitable structure will not be counted when computing the square footage of a habitable structure.

(26) Groin - a structure designed to stabilize a beach by trapping littoral drift. Groins are usually perpendicular to the shore and extend from the shoreline into the water far enough to accomplish their purpose. Groins are narrow and vary in length from less than one hundred feet to several hundred feet. Groin fields are a series of two or more groins which, because of their proximity to each other, have overlapping areas of influence. Consequently, the entire groin field must be considered as one system in order to accurately analyze beach response. The following is a list of the existing groins and groin fields in South Carolina as of 1991.

LIST OF EXISTING GROINS AND GROIN FIELDS IN SOUTH CAROLINA AS OF 1991

Garden City:

1. Six (6) groins south of the intersection of Yucca Street and Waccamaw Drive.
2. Two (2) groins south of the intersection of Dolphin Street and Waccamaw Drive.

Pawleys Island:

3. Twenty-three (23) groins along an area south of the northern causeway.
4. One (1) groin at the north end of the Island.

Isle of Palms:

5. One (1) groin at the north end of the Island along Dewees Inlet.
6. Two (2) groins at 42nd and 44th Avenues.

Sullivans Island:

7. Six (6) groins adjacent to Breach Inlet.

Folly Beach:

8. Forty-seven (47) groins.

Edisto Island:

9. Thirty-two (32) groins from the State Park south to Mikell Street.
10. Two (2) groins at Louise and Bailey Streets, along the South Edisto River.

Hunting Island:

11. One (1) groin at the north end of the Island.

Fripp Island:

12. One (1) groin at the north end of the Island.
13. Five (5) groins along the southern end of the Island.

Hilton Head Island:

14. Seventeen (17) groins in an area adjacent to Port Royal Sound.
15. Two (2) groins at the north end of Forest Beach, north of Yucca Drive.
16. Three (3) groins at Braddock Point, northwest of Merganser Court.
17. One (1) groin at Land's End, adjacent to Braddock Cove.

(27) Habitable Structure - a structure suitable for human habitation including, but not limited to, single or multi-family residences, hotels, condominium buildings, and buildings for commercial purposes. Each building of a condominium regime is considered a separate habitable structure, but if a building is divided into apartments, then the entire building, not the individual apartment is considered a single habitable structure. Additionally, a habitable structure includes porches, gazebos, and other attached improvements.

(28) Inlet Erosion Zone - a segment of shoreline along or adjacent to tidal inlets which is directly influenced by the inlet and its associated shoals.

(a) Unstabilized Inlets - inlets that have not been stabilized by jetties, terminal groins, or other structures.

(b) Stabilized Inlets - inlets which are stabilized by jetties, terminal groins, or other structures.

(29) Jetty - a structure that extends into the water to direct and confine river or tidal flow into a channel and to prevent or reduce shoaling of the channel by littoral material. Jetties are constructed for the purpose of stabilizing navigation channels.

(30) Joint Public Notice - a permit application public notice issued jointly between the Department and the United States Army Corps of Engineers or other agency and processed independently by the Department.

(31) Living Shoreline - A shoreline stabilization approach utilized in intertidal wetland environments that maintains, restores, and/or enhances natural estuarine processes through the strategic placement of native vegetation and/or use of green infrastructure as described in 30-12.Q. Living shorelines promote wetland resiliency and water quality, and enhance the diverse intertidal habitat.

(32) Major Development Activity - any construction activity that is not a Minor Development Activity.

(33) Marinas - a marina is any of the following:

(a) locked harbor facility;

(b) any facility which provides fueling, pump-out, maintenance or repair services (regardless of length);

(c) any facility which has effective docking space of greater than 250 linear feet or provides moorage for more than 10 boats;

(d) any water area with a structure which is used for docking or otherwise mooring vessels and constructed to provide temporary or permanent docking space for more than ten boats, such as a mooring field; or

(e) a dry stack facility.

(34) Master Plan - a document or a map prepared by a developer or a city as a policy guide to decisions about the physical development of the project or community.

(35) Minor Development Activity - the construction, maintenance, repair or alteration of any private pier or erosion control structure, the construction of which does not involve dredging.

(36) Nonwater-dependent - a facility which cannot demonstrate that dependence on, use of, or access to coastal waters is essential to the functioning of its primary activity.

(37) Normal Maintenance and Repair - work performed on any structure within the critical area as part of a routine and ongoing program to maintain the integrity of the structure provided that the structure is still generally intact and functional in its present condition and the work only extends to the original dimensions of the structure. See R.30-5(D).

(38) OCRM - the South Carolina Department of Health and Environmental Control's Office of Ocean and Coastal Resource Management.

(39) Offshore Breakwater - a structure which is designed to protect an area from wave action, is generally built parallel to the shore, may or may not be submerged, and may be built singly or in series. Breakwaters may interfere with natural wave action and wave induced currents.

(40) Party - each person or agency named or admitted as a party or properly seeking and entitled to be admitted as a party, including a license or permit applicant.

(41) Planned Development - a development plan which has received local approval for a specified number of dwelling and other units. The siting and size of structures and amenities are specified or restricted within the approval. This term specifically references multi-family or commercial projects not otherwise referenced by the terms master plan or planned unit development.

(42) Planned Unit Development - a residential, commercial, or industrial development, or all three, designed as a unit and approved in writing by local government.

(43) Pool - a structure designed and used for swimming and wading.

(44) Primary Oceanfront Sand Dunes - those dunes that constitute the front row of dunes adjacent to the Atlantic Ocean. For the purposes of establishing the jurisdictional baseline, the dune must have a minimum height of thirty-six (36) inches, as measured vertically from the seaward toe to the crest of the dune. The dune must also form a nearly continuous dune ridge for 500 shore parallel feet and may exhibit minimal breaks such as those resulting from pedestrian or emergency vehicle access points. This dune typically exhibits the presence of stable, native vegetation, and is not scarped, eroded, or overtopped by the highest predicted astronomical tides. However, this dune may be inundated by storm surge which normally accompanies major coastal storm events.

(45) Public Interest - As used within these Rules and Regulations, public interest refers to the beneficial and adverse impacts and effects of a project upon members of the general public, especially residents of South Carolina who are not the owners and/or developers of the project. To the extent that, in the opinion

of the Department, the value of such public benefits is greater than the public costs embodied in adverse environmental, economic and fiscal effects, a proposed project may be credited with net public benefits.

(46) Setback Area - the area located between the setback line and the baseline.

(47) Setback Line - the line landward of the baseline that is established at a distance which is forty times the average annual erosion rate as determined by historical and other scientific means and adopted by the Department in the State Comprehensive Beach Management Plan. However, all setback lines shall be established no less than twenty feet landward of the baseline, even in cases where the shoreline has been stable or has experienced net accretion over the past forty years.

(48) Significant Dune - A dune located completely seaward of the setback line, which because of its size and/or location is necessary to protect the beach/dune system of which it is a part.

(49) Special Geographic Circumstances - physical characteristics and land uses of surrounding uplands and waters may warrant additional consideration toward dock sizes. Special Geographic Circumstances identified by OCRM include: tidal ranges of greater than 6 feet; lots with greater than 500 feet of water frontage; and no potential access via dockage from the opposite side of the creek. At the discretion of Department staff, one or more of these circumstances may be applied to dock applications, which may allow up to an additional fifty percent (50%) to what is allowed in 30-12.A(2)(c).

(50) Standard Erosion Zone - a segment of shoreline which is subject to essentially the same set of coastal processes, has a fairly constant range of profiles and sediment characteristics, and is not directly influenced by tidal inlets or associated inlet shoals.

(51) Tidelands - all areas which are at or below mean high tide and coastal wetlands, mudflats, and similar areas that are contiguous or adjacent to coastal waters and are an integral part of the estuarine systems involved. Coastal wetlands include marshes, mudflats, and shallows and means those areas periodically inundated by saline waters whether or not the saline waters reach the area naturally or through artificial water courses and those areas that are normally characterized by the prevalence of saline water vegetation capable of growth and reproduction. Provided, however, nothing in this definition shall apply to wetland areas that are not an integral part of an estuarine system. Further, until such time as the exact geographic extent of this definition can be scientifically determined, the Department shall have the authority to designate its approximate geographic extent.

(52) Transmittal Form - the official form prepared by the agency with subject matter jurisdiction that is filed with the division notifying it of a request by any person for a contested case hearing.

(53) Water-dependent - a facility which can demonstrate that dependence on, use of, or access to coastal waters is essential to the functioning of its primary activity.

(54) Waterfront property - For purposes of these regulations, waterfront property will generally be defined as upland sites where a straight-line extension of both, generally shore perpendicular, upland property lines reaches a navigable watercourse within 1000' of the marsh critical line. Waterfront property may also be identified via an approved dock master plan where designated corridors differing from upland property line extensions are delineated.

Editor's Note

2004 Act No. 202, Section 3, provides as follows:

"Wherever the term 'Administrative Law Judge Division' appears in any provision of law, regulation, or other document, it must be construed to mean the Administrative Law Court established by this act."